

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-97-105

ESSEX COUNTY COLLEGE
FACULTY ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of Essex County College for a restraint of binding arbitration of a grievance filed by a faculty member represented by the Essex County College Faculty Association. The grievance asserts that the College violated a contractual provision allowing faculty members to receive half-year contracts under certain conditions and the demand for arbitration asserts that the College violated the grievance procedure by not timely responding to this grievance. The Commission finds that an arbitrator may consider contractual claims and defenses under Article 16 of the parties' agreement, but the College's policy goal - that no more than 50% of the course load in a program be taught by adjunct instructors - cannot be contested or invalidated through binding arbitration. The Commission declines to restrain arbitration over the specific claim that the College violated the parties' grievance procedures, but will permit the College to refile its petition if the arbitrator finds a violation and issues a remedy the College believes is inconsistent with the limitations set forth in this opinion.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Weiner Lesniak, attorneys
(Ollie H. Hawkins, on the brief)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Robert A. Fagella, on the brief)

DECISION

On April 23, 1997, Essex County College petitioned for a scope of negotiations determination. The College seeks a restraint of binding arbitration of a grievance filed by a faculty member represented by the Essex County College Faculty Association. The grievance asserts that the College violated a contractual provision allowing faculty members to receive half-year contracts under certain conditions. The demand for arbitration asserts that the College violated the parties' contractual grievance procedure by not timely responding to this grievance.

The parties have filed briefs and exhibits. These facts appear.

The Association represents the College's full-time faculty and half-time lecturers. The College and the Association are parties to a collective negotiations agreement effective from September 1, 1996 to August 31, 2000. The grievance procedure ends in binding arbitration of disputes over contractual provisions and certain other disputes, but excludes "[m]atters involving the discretion of the Board."

Article 5.4 of the agreement requires that a grievance be filed within 15 working days after a grievant's presumed knowledge of the act upon which a grievance is based. Article 5-12.1 provides that "[f]ailure of the administration at any step to submit a written disposition within the prescribed time limits shall allow the grievance." Article 16 is entitled "Half Year Contracts." It provides, in part:

16.1 Application for a Half Year Contract will be made to the appropriate Dean by December 31 of the previous academic year. The Dean will forward the application, through channels, for recommendation to the Board of Trustees.

16.2 The Board of Trustees will consider all applications, and maintains the right to approve said applications which provide adequate savings to the College. If there are such savings, and the instructional delivery of the program will not be adversely affected, then Board approval will not be arbitrarily or capriciously withheld.

* * *

16.9 In the event that this Article or any part hereof shall be ruled invalid, any individual granted such a contract will be deemed to have been granted a special sabbatical for the time during which employment duties were not rendered.

Faculty members who receive half-year contracts are considered full-time employees and receive 60% of their salaries as well as fringe benefits for the entire year. Other articles address sabbaticals and other leaves of absence.

Professor Joseph O'Connell is a full-time mathematics instructor. On December 14, 1995, O'Connell applied for a half-year contract for the 1996-97 academic year.

On June 18, 1996, the Dean of Science and Technology, in a letter to the College president, responded to O'Connell's request. She stated that she could not recommend a half-year contract for O'Connell based on the educational needs of the students and the programmatic desire not to have math adjuncts teaching over fifty percent (50%) of all mathematics credits. Her recommendation was based on a "Faculty Staffing Proposal" recommended by the Deans' Council on March 6, 1992. That proposal set forth a three-year plan to employ more full-time teachers and specified a goal that no more than 50% of the course load in a program should be taught by adjunct instructors. The record does not indicate whether this three-year plan has been extended.

On June 21, 1996, the College denied O'Connell's request for a half-year contract.

On July 5, 1996, O'Connell responded to that denial. He asserted that he should be granted a half-year contract because

the College could "save on overall salary costs and increase the number of credits taught by full-time faculty." He requested that his response be considered as a first step grievance. A grievance was then filed asserting that the College had violated Article 16 by arbitrarily denying O'Connell a half-year contract.

The parties tried to settle the grievance. On December 30, 1996, an NJEA field representative sent a memorandum to the Dean of Science and Technology. The memorandum asserted that the College had violated the parties' negotiated grievance procedures by not timely responding in writing to O'Connell's grievance and that O'Connell's grievance should therefore be upheld under Article 5-12.1. The memorandum then suggested that the College grant O'Connell's grievance based on Article 5-12.1 and that O'Connell be permitted not to teach during the Spring 1997 semester. The memorandum added that granting this remedy would not obligate the College to provide any other half-year contracts and that applications for half-year contracts would be considered case-by-case.

The College rejected this offer. The Association then demanded arbitration of its claim that the College had failed to process O'Connell's grievance and attached the contractual article on grievance procedures to its demand. This petition ensued.

The College and the Association agree that Article 16 is mandatorily negotiable. The College argues, however, that a

denial of a half-year contract is not legally arbitrable because it implicates staffing levels and teaching assignments and that enforcement of Article 16 must instead be sought in court. It also asserts that O'Connell did not submit a timely formal grievance as required by Article 5-4; the grievance procedure is self-executing so that any failure to respond should simply have allowed the grievance to be moved to the next step; and the matter involves the Board's discretion and thus is not contractually arbitrable.

The Association argues that grievance procedures and leaves of absence, such as sabbaticals or professional development leaves, are mandatorily negotiable and legally arbitrable. It asserts that if a clause is mandatorily negotiable, a grievance concerning that clause is legally arbitrable. See West Windsor Tp. v. PERC, 78 N.J. 98, 115-116 (1978). The College responds that the parties' contract distinguishes between leaves of absence and half-year contracts.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are

questions appropriate for determination by an arbitrator and/or the courts.

We do not consider the merits of the Association's contractual claims or the employer's contractual defenses.

The parties agree that Article 16 is mandatorily negotiable. The clause protects the College's right not to have the delivery of its instructional program impaired and prohibits only arbitrary and capricious denials of half-year contracts. The parties further agree that Article 16 is legally enforceable. The College, however, asserts that enforcement must be sought in court. Case law establishes that disputes that are mandatorily negotiable are also legally arbitrable. West Windsor. An arbitrator may therefore consider the contractual merits of the parties' claims and defenses.

We are persuaded, however, that the College has a separate and distinct managerial prerogative to adopt an educational policy goal that no more than 50% of the course load in a program should be taught by adjunct instructors. Accordingly, the arbitrator may consider contractual claims and defenses under Article 16, but the College's policy goal cannot be contested or invalidated through binding arbitration.

In its demand for arbitration, the Association narrowed its claim to its assertion that the College failed to comply with the parties' negotiated grievance procedures, specifically the requirements that a grievance be answered in writing and within a

certain time period. N.J.S.A. 34:13A-5.3 requires negotiations over grievance procedures, and there is no contention that the negotiated grievance procedures in this case are illegal. The College does raise several contractual defenses concerning the applicability and conditions of the parties' grievance procedures, but these defenses must be addressed by the arbitrator under Ridgefield Park.^{1/} We therefore decline to restrain arbitration over the specific claim that the College violated the parties' negotiated grievance procedures.

While the Association's grievance procedure claim is legally arbitrable, any remedy for any violation must also be within the scope of negotiations. Compare Woodstown-Pilesgrove Reg. H.S. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980) (arbitrator upheld grievance given untimely response; underlying compensation claim for extended workday is mandatorily negotiable). In accordance with our policy, we will not speculate about what remedies might be awarded or might be appropriate or enforceable. See, e.g., State of New Jersey, P.E.R.C. No. 86-11, 11 NJPER 457 (¶16162 1985).


^{1/} In unfair practice cases, we have jurisdiction to consider whether a contractual grievance procedure is self-executing. See, e.g., New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986). We lack such jurisdiction in a scope of negotiations case.

We will permit the College to refile its petition if the arbitrator finds a violation and issues a remedy the College believes is inconsistent with the limitations set forth in this opinion. Accord Franklin Lakes Bd. of Ed., 21 NJPER 362 (126224 App. Div. 1995), aff'g P.E.R.C. No. 95-24, 20 NJPER 395 (125198 1994). We also add that independent of its negotiability, an award must also be consonant with the law and must take the public interest and welfare into account. Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 208, 217 (1979).

ORDER

The request of Essex County College for a restraint of arbitration is denied, without prejudice to the College's refiling its petition if the arbitrator issues an award which the College believes is inconsistent with the limitations expressed in this opinion.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: February 26, 1998
Trenton, New Jersey
ISSUED: February 27, 1998